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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,797	01/29/2004	Vernal J. Comeaux	10303-62177	5558

7590

05/06/2005

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EXAMINER

FORD, JOHN K

ART UNIT

PAPER NUMBER

3753

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary

Application No.

10/767,797

Applicant(s)

COMEAX ET AL.

Examiner

John K. Ford

Art Unit

3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-15 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

This application contains claims directed to the following patentably distinct species of the claimed invention:

first species of Figures 2-4, as shown (with system parallel connected across the boiler and chiller),

second species of Figure 5 as shown (with the system series connected in supply conduit 7),

third species of Figure 5, not shown (with the system series connected in return conduit 8),

fourth species of Figure 6 as shown (with a plurality of tanks connected in parallel with respect to one another, each having pistons 11),

fifth species of Figure 7 as shown (with two tanks without any pistons or other equivalents to pistons),

sixth species of Figure 8 as shown (with two tanks with elastic bladders) and an in-determinant number of additional species comprising un-illustrated variants of the above six species.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims appear to be generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

In the event one of the un-illustrated variants is elected, a proposed drawing correction illustrating it is required, in response to this office action to facilitate examination.

The disclosure is objected to because of the following informalities: at the following locations in the originally filed specification there appear to be missing letters "e", page 2, line 3, page 3, line 2, page 5 line 2, page 6, line 25, page 8, line 3, page 10, line 25, page 2, line 3, page 13, lines 1 and 2 and page 18, line 1. The Examiner makes no representation that these are all the errors. Applicant should go over the specification carefully to assure there are no other errors.

Appropriate correction is required.

Art Unit: 3753

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the third valve means and fourth valve means are claimed as connecting the first portion of the tank to the second portion of the tank and vice versa. This is not descriptive of the original disclosure. The third valve means connects the second portion of the tank to said supply line. Similarly, the fourth valve means connects the second portion of the tank to the return line. As well in paragraph (b) of claim 1, "hydronic" is twice misspelled as "hydroponic".

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 6 and 10 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Newton (3,384,155).

In Newton, three-way valves 18 and 100 are each equivalent in function to two of applicant's disclosed two-way valves. Thus, they total four valves connected as disclosed for the same purpose. Tank 110 stores cold water and tank 112 stores hot water.

Claims 1, 4, 5, 6, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newton as applied to claims 1, 5 and 10 above, and further in view of Tamblyn et al. (4,135,571).

Tamblyn teaches a total of four two-way valves 44, 46, 48 and 50 to feed fluid (hot or cold water) to and from each side of a partitioned tank in a side portion of the return line (126, 128) as shown in Figure 2. To have replaced the two three-way valves 18 and 100 of Newton with a total of four 2-way valves as taught by Tamblyn would have been obvious to one of ordinary skill in the art since they are generally less expensive than three way valves and are easier to disconnect for repair purposes (i.e. having only two connections rather than three). That two two-way valves are equivalent to a single three-way valve is taught by Karl (USP 6,584,785) at 12, 13 & 17, not relied upon in this rejection except as evidence to show conventional knowledge of which the Examiner takes official notice.

As well, regarding claims 4 and 9, Tamblyn also teaches forming a tank for two different temperature liquids with a movable partition in the middle to keep the different temperature liquids from mixing. To have replaced the two tanks of Newton with such a single tank to reduce costs and conserve space would have been obvious to one of ordinary skill in the art.

Claims 2, 3, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of the prior art as applied to claim 1 above, and further in view of Tamblyn (4,590,992) or Yamaoka (4,479,352) Fig. 6.

Art Unit: 3753

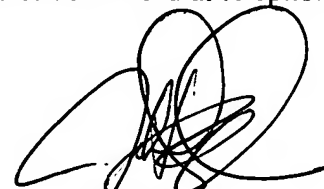
Tamblyn '992 discloses cylindrical tanks (Fig. 2, single tank and Fig 9 plural parallel connected tanks) that have a piston 30 that separates two different temperature liquids. Also see Yamaoka Figure 6, piston 34, for essentially the same teaching. To have used this type of tank in the art to conserve space and increase storage capacity for larger buildings would have been obvious to one of ordinary skill in the art.

Claims 11-15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication should be directed to John Ford at telephone number (571) 272-4911.

Ford/PJ

4/28/05



John K. Ford
Primary Examiner